

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ANTHONY M. COLAVITO,  
Plaintiff,

v.

Civil No. 3:22cv817 (DJN)

WILLIAM DIEHL, *et al.*,  
Defendants.

**MEMORANDUM OPINION**

By Memorandum Order entered on December 29, 2022, the Court conditionally docketed Plaintiff's civil action. (ECF No. 3.) At that time, the Court directed Plaintiff to submit a statement under oath or penalty of perjury that:

- (A) Identifies the nature of the action;
- (B) States his belief that he is entitled to relief;
- (C) Avers that he is unable to prepay fees or give security therefor; and,
- (D) Includes a statement of the assets he possesses.

*See* 28 U.S.C. § 1915(a)(1) (setting forth rules for proceedings *in forma pauperis*). The Court provided Plaintiff with an *in forma pauperis* affidavit form for this purpose.

Additionally, the Court directed Plaintiff to affirm his intention to pay the full filing fee by signing and returning a consent to collection of fees form. The Court warned Plaintiff that a failure to comply with either of the above directives within thirty (30) days of the date of entry thereof would result in summary dismissal of the action. (ECF No. 3, at 3.)

Plaintiff has not complied with the orders of this Court. Plaintiff failed to return a completed *in forma pauperis* affidavit form and a consent to collection of fees form. As a result, he does not qualify for *in forma pauperis* status. Furthermore, he has not paid the statutory filing fee for the instant action. See 28 U.S.C. § 1914(a) (providing that “[t]he clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350”). Such conduct demonstrates a willful failure to prosecute. Accordingly, this action will be DISMISSED WITHOUT PREJUDICE pursuant to Fed. R. Civ. P. 41(b).

An appropriate Order shall accompany this Memorandum Opinion.

Let the Clerk file a copy of the Memorandum Opinion electronically and send a copy to Plaintiff.

/s/  
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David J. Novak  
United States District Judge



Richmond, Virginia  
Dated: February 10, 2023